

REMARKS

Claim Rejections – 35 USC § 103

The Examiner has rejected claims 1-10, 12-16, 20 and 23-63 under 35 U.S.C. 103(a) as being unpatentable over Garcia (US 2003/0007612 hereinafter “Garcia”) in view of Shambaugh et al. (US 6,970,821, hereinafter “Shambaugh”), Yushick (U.S. 6,526,382) (hereinafter “Yushick”) and Young et al. (U.S. 2003/015072; con’t. of 09/535,1550) (hereinafter “Young”).

The Examiner has rejected claims 11,17, 19, 21, 22, under 35 U.S.C. 103(a) as being unpatentable over Garcia (US 2003/0007612 hereinafter “Garcia”) in view of Shambaugh Yushick, Young, as applied to claim 1 above, and further in view of Rtischev et al. (US 5,634,086, hereinafter Rtischev).

As stated in MPEP § 2143.01, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicants respectfully submit, as will be detailed below, that neither Garcia, Shambaugh, Yushick, Young nor Rtischev do not, either expressly or inherently, teach or suggest various limitations recited in the pending claims.

Applicant respectfully disagrees and traverses independent claims 1, 23, 33, 60, 61, 62, and 63 and each and every claim depending therefrom for the reasons set forth below.

In the Response to Arguments Section of the Office Action, the Examiner states “therefore all that is required is to address all of the limitations in the claim because the claim limitations contain the claimed invention. As long as each and every claim limitation is addressed (i.e. as a whole).” As Applicant has been stating throughout prosecution of all the related patents including the present application, the claims as a whole have to be addressed. In fact, it is stated with clarity below – from the prior Response.

The Examiner goes on to quote *KSR* stating “the obviousness analysis need not seek out precise teachings directed to specific subject matter of the challenged claim an” and can take into account inferences that a person of ordinary skill in the art would employ.” 82 USPQ2d, 1835, 1396 (2007). The Examiner goes on to quote *WL Gore v. Garlock*, which states if the inference

leads to ambiguity it cannot be made. The Examiner States that the issue of treating the claim as a whole is whether or not the prior art actually taught the limitations in the claims.

As stated previously, the Examiner states that “it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Garcia to include the teachings of Shambaugh of determining whether the at least one agent has adequately followed the at least one script, by dividing the voice interaction into viewable panel-level segments and comparing the panel-level segments to the automatic speech recognition analyzed voice interaction, in order to determine whether an agent is successful or not, as described in Shambaugh (col. 6, lines 5-7). The Examiner has used a very broad statement to sum up a very specific claim:

creating at least one voice record of at least one interaction processed by the at least one agent;
defining at least first data relating to evaluating compliance of the at least one agent with the at least one script; and
processing the at least one voice record against the at least first data by dividing the voice record into viewable panel-level segments wherein a panel-level time displacement stamp is assigned to each panel and comparing the panel-level segments to an automatic speech recognition analyzed voice interaction, wherein a set of action rules is applied to the output of the determining to direct a quality assurance action to be taken.

However, col. 6, lines 6-7 state “A performance processor may compare sales totals among the agents and select the most successful agent.” This has *nothing* to do with claim 1 (and all other independent claims) as set forth above. There is no statement in the claim that “a performance processor may compare sales totals and select the most successful agent.” In fact, Applicant’s claim 1 has *nothing to do with* “*selecting a successful agent*” at all. A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a prima facie case of obviousness without some objective reason to combine the teachings of the references. Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App.

& Inter. 1993). “[R]ejections on obviousness cannot be sustained by *mere conclusory* statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” KSR, 550 U.S., 82 USPQ2d at 1396 quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where *there is some teaching, suggestion, or motivation to do so.* (emphasis added) *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) (discussing rationale underlying the motivation-suggestion-teaching as a guard against using hindsight in an obviousness analysis).

Moreover, the analysis by the Examiner of the claim of “evaluating the at least one voice interaction with at least one automatic speech recognition component adapted to analyze the at least one voice interaction” is faulty. The portion of Garcia that the Examiner quotes *is not related to and therefore does not obviate the claim.* The portion of Garcia states “if voice recognition software is used, a choice is entered based on *customer voice response, which must be enabled at the customer end.* Ascertaining the differences between the prior art and the claims at issue requires interpreting the claim language, and considering both the invention and the prior art as whole. MPEP §2142.02. Distilling the invention down to a gist or to a thrust of the invention disregards the “as a whole” requirement. MPEP §2142.02. *W. L. Gore & Associates, Inc. v Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed Cir. 1983) *cert. denied*, 469 U.S. 851 (1984) (restricting consideration of the claims to 10% per second rate of stretching of unsintered PTFE and disregarding other limitations resulted in treating claims as though they read differently than allowed).

The Examiner has misinterpreted the prior art and also distilled the invention down to a thrust or gist of the invention – *both of which are impermissible and invalidates the Examiner’s analysis.* “In determining whether the invention as a whole would have been obvious under 35 USC 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question... but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification. . . Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, *it is this invention as a whole, and*

not some part of it, which must be obvious under 35 USC 103.” (Emphasis added) In re Antonie, 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1977) (citations omitted) (The claimed wastewater treatment device had a tank volume to contractor area of 0.12 gal./sq. ft. The court found the invention as a whole was the ratio of 0.12 and its inherent property that the claimed devices maximized treatment capacity regardless of other variables in the devices. The prior art did not recognize that treatment capacity was a function of the tank volume to contractor ratio, and therefore the parameter optimized was not recognized in the art to be a result-effective variable.). See also In re Papesch, 315 F.2d 381, 391, 137 USPQ 43, 51 (CCPA 1963) (“From the standpoint of patent law, a compound and all its properties are inseparable.”). Throughout the Office Action the Examiner has, in a detailed manner, methodically separated claim elements, given some elements a particular meaning to fit the element or portion of the element to the prior art and has made different claims about the same prior art.

In conclusion, the Examiner has chosen prior art, tried to show obviousness by combining or modifying the teachings of the prior art to produce the claimed invention where there is no teaching, suggestion, or motivation to do so and distilled the invention down to a “gist” or “thrust” of the invention disregarding the “as a whole” requirement.

However, purely in the interest of expediting the prosecution of the instant invention, Applicant has amended independent claims 1, 23, 33, 60, 61, 62, and 63 to include one or more of the following limitations:

conducting at least one voice interaction between the at least one agent and the at least one client, wherein the at least one agent follows the at least one script at an agent workstation;

evaluating the at least one voice interaction with at least one automatic speech recognition component having a confidence level threshold including supplying audio files in real time of at least one voice interaction adapted to analyze the at least one voice interaction.

In light of the arguments set forth above, Applicant traverses each and every claim, depending from claims 1, 23, 33, 60, 61, 62, and 63.

Support for such limitations, which are not taught or suggested by the cited art, can be found at least in pages 12-19 of the instant invention. As such, Applicant believes that claims 1, 23, 33, 60, 61, 62, and 63, as well as the claims that depend from them, are in condition for allowance and respectfully request they be passed to allowance.

Respectfully submitted,

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